

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER WAYNE SAYER,

Defendant-Appellant.

UNPUBLISHED

February 1, 2007

No. 260101

Calhoun Circuit Court

LC No. 04-001723-FC

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree murder,¹ MCL 750.317, and was sentenced to 20 to 40 years in prison. He appeals as of right, claiming that there was insufficient proof of malice or intent to support the charge of second-degree murder. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

This Court reviews de novo a trial court's decision on a motion for directed verdict. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). When deciding a motion for directed verdict, the trial court must consider the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *Id.* Similarly, we review de novo a sufficiency-of-the-evidence claim to determine whether a rational jury could have concluded that the prosecution proved all elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). All direct and circumstantial evidence is viewed in the light most favorable to the prosecution. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). In deciding whether the evidence at trial was sufficient to sustain a conviction, we "will not interfere with the role of the trier of fact of determining the weight of the evidence or the credibility of witnesses." *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

¹ The jury was properly instructed on both second-degree murder and the lesser offense of voluntary manslaughter.

All murder that is not first-degree murder is second-degree murder. MCL 750.317. The elements of second-degree murder are: “(1) death, (2) caused by defendant’s act, (3) with malice, and (4) without justification.” *People v Mendoza*, 468 Mich 527, 534; 664 NW2d 685 (2003). To establish second degree murder, “the prosecution must show that defendant caused the death of the victim and that the killing was done with malice and without legal justification or excuse.” *People v Wofford*, 196 Mich App 275, 278; 492 NW2d 747 (1992). “Malice consists of the intent to kill, the intent to do great bodily harm, or the intent to create a high risk of death or great bodily harm with knowledge that either is the probable result” *Id.* “The intent to do an act in obvious disregard of life-endangering consequences is a malicious intent,” and the defendant need not actually intend the harmful result. *People v Goecke*, 457 Mich 442, 466; 579 NW2d 868 (1998).

Malice “may be inferred from the facts and circumstances of the killing.” *Wofford*, *supra* at 278. Circumstantial evidence and the inferences from the evidence are admissible to establish malice. *People v Abraham*, 256 Mich App 265, 270; 662 NW2d 836 (2003). A defendant’s confession may establish malice. *People v Spearman*, 195 Mich App 434, 440; 491 NW2d 606 (1992). The facts or circumstances that establish malice must “not mitigate the degree of the offense to manslaughter or constitute justification or excuse.” *People v Neal*, 201 Mich App 650, 654; 506 NW2d 618 (1994).

“Manslaughter is murder without malice.” *Mendoza*, *supra* at 534. Malice is “the element distinguishing murder from manslaughter,” *id.* at 540, and “provocation is the circumstance that negates the presence of malice,” *id.* at 536. “Voluntary manslaughter is an intentional killing committed under the influence of passion or hot blood produced by adequate provocation and before a reasonable time has passed for the blood to cool.” *People v Hess*, 214 Mich App 33, 38; 543 NW2d 332 (1995). The intent to kill or commit serious bodily harm is an essential element of voluntary manslaughter. *Id.* Thus, while murder and voluntary manslaughter are both intentional killings, it is provocation that distinguishes the two crimes. *Id.*

In this case, Heather Hall, the wife of defendant’s close friend Robert Hall, was having an affair with the victim. Defendant knew about the affair and was upset. Defendant expressed anger to Heather about her relationship with the victim, calling it disgusting. Further, defendant lived in victim’s apartment at the time of the victim’s death. Because Heather was planning to move in with the victim, defendant had apparently been asked by the victim to move out.

Defendant does not deny killing the victim. Rather, he claims the evidence showed he was “acting out of passion for his friend, for the situation [of] his friend,” and was acting in response to being “kick[ed] out of the apartment and [having] no place to turn.” Defendant also claims the victim was “taunting him over and over, insulting him, telling him what Ms. Hall and he were doing and where they were doing it.” Given the evidence presented below, defendant argues that there was insufficient evidence of second-degree murder in this case. Defendant alternatively asserts that the trial court should have granted his motion for a directed verdict on the second-degree murder charge, entering at most a conviction of voluntary manslaughter. We disagree.

The evidence showed that defendant was very close with Robert Hall and that he was angered by Heather’s adulterous relationship with the victim. In a statement to the police, defendant detailed a conversation he had with Robert in which Robert expressed a desire to kill

the victim so that Heather would return to him. Defendant told the interrogating officer that he attempted to dissuade Robert from killing the victim. However, defendant also told the officer that when he went to bed that night, “I pretty much programmed into my head to do [it].” In other words, defendant essentially admitted that he had decided to act in Robert’s place by killing the victim himself.

Although defendant claimed that he did not remember anything about the actual killing, he admitted that he struck the victim with both hands in the back and middle of his head and that he “did not stop” hitting the victim. Evidence at the crime scene established that a struggle occurred in the basement of the victim’s apartment, and blood stains in various locations indicated that the victim was wounded during the struggle. An autopsy revealed that the victim had received about 33 wounds over all areas of his body, including multiple blunt force injuries to the chest, neck, and head, which were consistent with being struck by a table leg. A broken table leg, believed to be the weapon used by defendant, was found at the scene. In addition, the autopsy revealed that the victim suffered injuries consistent with manual strangulation. Lastly, there was extensive evidence that defendant tried to cover up his role in the killing, first by cutting the water hose to a washing machine in an attempt to flood the basement where the victim’s body lay, and also by washing the clothes he had been wearing in bleach and disposing of them in the dumpster of a nearby gas station.

Viewed in a light most favorable to the prosecution, a rational trier of fact could have reasonably concluded from the evidence presented that (1) defendant had previously decided to kill the victim, (2) defendant went to the victim’s apartment with the intent of doing so, (3) defendant inflicted numerous injuries upon the victim, which circumstantially reflected an intent to kill, an intent to do great bodily harm, or a willful disregard of the likelihood of death or great bodily harm, and (4) the injuries suffered by the victim in fact resulted in his death. The evidence was sufficient to allow a rational jury to find the elements of second-degree murder proven beyond a reasonable doubt. *Wolfe, supra* at 515. For the same reason, the trial court did not err in denying defendant’s motion for a directed verdict on the second-degree murder charge. *Hammons, supra* at 556.

Finally, contrary to defendant’s contention, the evidence did not show that defendant was provoked by the victim or that he acted in “hot blood.” See *Hess, supra* at 38. Because the evidence presented did not indicate provocation, and instead supported the jury’s finding of malice, the trial court properly declined to reduce defendant’s murder conviction to voluntary manslaughter.

Affirmed.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Jessica R. Cooper